



09/887,791

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**DEC 01 2004**

**OFFICE OF PETITIONS**

In re Patent No. 6,730,237  
Michael R. Sievers et al.  
Issue Date: May 4, 2004  
Application No. 09/887,791  
Filed: June 22, 2001  
Attorney Docket No.  
FIS920000409US1

:  
: DECISION ON APPLICATION FOR  
: PATENT TERM ADJUSTMENT  
: AND  
: NOTICE OF INTENT TO ISSUE  
: CERTIFICATE OF CORRECTION  
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed May 28, 2004. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from thirteen (13) days to one hundred thirty-three (133) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred thirty-three (133) days.

On May 4, 2004, the above-identified application matured into U.S. Patent No. 6,730,237. The instant request for reconsideration considered filed May 28, 2004 was timely filed within 30 days of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 13 days. Patentees state that the initial determination of patent term adjustment of 133 days should not have been reduced by 120 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the only paper filed after the mailing of the Notice of Allowance was a Comments on Statement of Reasons for Allowance.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or

examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 120 days was based on the filing after allowance of a "Comments on Statement of Reasons for Allowance" filed November 24, 2003. Thus, it is concluded that the patent term adjustment should not have been reduced by 120 days.

Furthermore, there were no other bases for reduction of the patent term adjustment.

In view thereof, the patent term adjustment indicated on the patent should have been one hundred thirty-three (133) days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 09-0458, as authorized. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred thirty-three (133) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney, Patricia Faison-Ball at (571) 272-3212.

*Karin A. Ferriter*  
*for*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

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